EXHIBIT A

Appendix A

Affidavit of Professor Jerry A. Hausman

1. My name is Jerry A. Hausman. I am the MacDonald Professor of Economics at the Massachusetts Institute of Technology in Cambridge, Massachusetts, 02139.

2. I received an A.B. degree from Brown University and a B.Phil. and D. Phil. (Ph.D.) in Economics from Oxford University where I was a Marshall Scholar. My academic and research specialties are econometrics, the use of statistical models and techniques on economic data, and microecomomics, the study of consumer behavior and the behavior of firms. I teach a course in "Competition in Telecommunications" to graduate students in economics and business at MIT each year. Mobile telecommunications, including competitive and technological developments in cellular, ESMR, satellite, and PCS, are some of the primary topics covered in the course. I was a member of the editorial board of the Rand (formerly the Bell) Journal of Economics for the past 13 years. The Rand Journal is the leading economics journal of applied microeconomics and regulation. In December 1985, I received the John Bates Clark Award of the American Economic Association for the most "significant contributions to economics" by an economist under forty years of age. I have received numerous other academic and economic society awards. My curriculum vitae is attached.

3. I have done significant amounts of research in the telecommunications industry. My first experience in this area was in 1969 when I studied the Alaskan telephone system for the Army Corps of Engineers. Since that time, I have studied the demand for local measured service, the demand for intrastate toll service, consumer demands for new types of telecommunications

I. Summary and Conclusions

5. I have been asked by Southwestern Bell Corporation to consider questions of equal access and geographic scope of local calling areas for commercial mobile radio services (CMRS) providers which are raised int he FCC NPRM and NOI "In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services" (CC Docket No. 94-54).

6. I conclude that equal access should not be required for cellular service providers. Equal access requirements on BOC cellular providers, caused by the MFJ, currently cost consumers about $900 million per year and have led to decreased competition among providers of cellular service. A much better policy for the FCC would be to petition the MFJ court to eliminate the current equal access and interLATA restrictions on BOC cellular carriers. This policy change is especially timely given the pending full scale inception of operation by Nextel and the pending PCS broadband auctions.

7. Geographical calling areas for extended local service should at a minimum be as large as an MTA. The current LATA boundaries are not based on any realistic economic basis for users of cellular telephone service or of current and future competition among CMRS providers. Consumers would have lower costs of using their cellular telephone and competition would increase with large area calling scopes.

8. The proper framework for regulation of cellular telephone is to attempt to encourage high quality service and the lowest price for consumers. This goal is far different from a goal of "protecting" IXCs from having to deal with large buyers who can achieve much lower prices on long distance service than individual cellular customers currently pay. Competition among IXCs to provide cellular long distance service has been almost non-existent with AT&T and the other IXCs engaged in anti-competitive price discrimination against cellular long distance customers. Thus, a requirement of equal access

EXHIBIT B

U S WEST, Inc.
7800 East Orchard Road, Suite [illegible]
Englewood, Colorado 80111
303 [illegible]
Facsimile [illegible]

Jeffrey G. Hoffield
Attorney

U S WEST

Via FAX and Airborne

October 22, 1996

Mr. Andrew W. Buffmire, Esq.
Sprint Spectrum L.P.
4717 Grand
Kansas City, Missouri 64112

Re: Interconnection

Dear Mr. Buffmire:

This letter is to inform you that U S WEST Communications hereby withdraws its offer for Interconnection communicated to you on September 25, 1996 by letter from Keith Galitz to Mr. Jack Weyforth. In that letter, U S WEST offered Sprint Spectrum the FCC default proxy prices of $0.004 per minute of use (Type 2b) and tandem switching, transport and end office at $0.0065 per minute of use (Type 2A). However, due to the stay of the FCC rules with regard to pricing issued by The United States Court of Appeals for the 8th Circuit, this offer is withdrawn.

Rather, in response to the stay, U S WEST Communications again offers you the standard Type II Interconnection contract for wireless carriers that is currently in operation. The offer provides for the following terms and conditions:

- Interconnection at the end office for Type II(B) interconnection will be at the rate of $0.0206 per minute.
- Type II(A) interconnection using tandem transport and end office switches will be at the rate of $0.0245 per minute.

Further, U S WEST Communications is prepared to begin negotiations on a contract that provides for reciprocal compensation consistent with the Telecommunications Act of 1996.

Should you have any other questions or concerns, please do not hesitate to contact me.

Sincerely,

Jeffrey G. Holifield

cc: Keith Galitz
Larry Brotherson
Denyce Jennings
Jack Weyforth

EXHIBIT C

IN THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Iowa Utilities Board, *et al.*,	)	
	)	
Petitioners,	)	Case No. 96-3321
	)	and consolidated cases
v.	)	
	)	
Federal Communications Commission and	)	
The United States of America	)	
	)	
Respondents.	)	

RESPONSE TO EMERGENCY MOTION TO MODIFY STAY

Comcast Corporation, ("Comcast"), Vanguard Cellular Systems, Inc. ("Vanguard") and Western Wireless Corporation ("Western Wireless") (the "Joint Parties") by and through their attorneys, and in accordance with the Court's October 21 Order, hereby submit this response to the Emergency Motion to Modify Stay filed on October 18, 1996 by AirTouch Communications, Inc. (the "AirTouch Motion"). The AirTouch Motion asks the Court to partially lift the stay imposed on many of the rules adopted by the Federal Communications Commission (the "Commission" or "FCC") to implement Sections 251 and 252 of the Telecommunications Act of 1996 (the "1996 Act").[1/] This Court has authority to modify the stay and restore the status quo pursuant to 5 U.S.C. § 705.

1/ See Order Granting Stay Pending Judicial Review, Iowa Utilities Board v. FCC, Case No. 96-3321 and consolidated cases (Oct. 15, 1996) ("Stay Order"). Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (to be codified at 47 U.S.C. § 151 et seq.).

In the Stay Order, the Court stayed rules characterized as "pricing rules," along with the rules implementing the "most favored nation" provision of Section 252 of Title 47. AirTouch argues that the stay extends too far. The Joint Parties concur with the AirTouch Motion and its analysis of the FCC's jurisdiction under 47 U.S.C. § Section 332. This response, however, focuses on other reasons the Court must remove the stay as to several critical provisions of the Commission's rules. These provisions do not set prices but are essential to negotiating interconnection arrangements between Commercial Mobile Radio Service ("CMRS") providers and incumbent local exchange carriers ("LECs").[2] By allowing these non-price related regulations to take effect, this Court can mitigate to some degree the substantial unrecoverable harm the stay creates for CMRS providers.

I. A STAY OF NON-PRICING RECIPROCAL COMPENSATION RULES IRREPARABLY HARMS CMRS PROVIDERS.

A. There Is a Long History of LEC Intransigence in Interconnection Matters.

Long before passage of the 1996 Act, cellular providers required interconnection to the facilities of monopoly LECs. Recognizing that incumbent LECs had no incentive to provide reasonable terms and conditions for interconnection to cellular carriers, the Commission required LECs to engage in good faith negotiation with cellular carriers for cost-based interconnection rates. The Commission elaborated on this requirement in 1994 by adopting a rule requiring

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2/ Specifically, the Joint Parties request that the Court lift its stay of at least the following non-pricing provisions: (1) Section 51.701 (scope of CMRS provider's service area); (2) Section 51.703 (reciprocal compensation obligation of LECs); (3) Section 51.711(a)(1) (symmetrical reciprocal compensation); and (4) Section 51.717 (renegotiation of existing non-reciprocal arrangements). The text of these rules is attached hereto as Exhibit 1.

LECs to pay reciprocal compensation to CMRS providers. This was in recognition of the benefits LECs derived from terminating their traffic on the networks of CMRS providers.[3/]

After receiving substantial evidence that LECs refused to provide reciprocal compensation to CMRS providers, the Commission initiated a rulemaking proceeding in 1995 to reform existing CMRS interconnection arrangements.[4/] Following enactment of the 1996 Act, the FCC received additional evidence that LECs used their monopoly positions to impose interconnection charges of up to 8,000 percent their costs,[5/] merged its CMRS interconnection reform proceeding into the rulemaking implementing Section 251 of the 1996 Act, and adopted new CMRS interconnection rules, including the non-pricing rules that are the subject of this response.

3/ 47 C.F.R. § 20.11 ("A local exchange carrier shall pay reasonable compensation to a Commercial Mobile Radio Service provider in connection with terminating traffic that originates on facilities of the local exchange carrier.") See also Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Regulatory Treatment of Mobile Services, Second Report and Order, 9 F.C.C.R. 1411, 1498 (1994).

4/ See Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Notice of Proposed Rulemaking, CC Docket No. 95-185, 94-54 11 F.C.C.R. 5020 (released Jan. 11, 1996).

5/ Comcast's cellular subsidiary has paid the incumbent LEC in its area, Bell Atlantic, nearly 2.5 cents per minute for interconnection for the last ten years, while Bell Atlantic has paid nothing for the termination services Comcast Cellular provides to Bell Atlantic's customers. See Declaration of Jeffrey E. Smith ¶ 3 (Oct. 24, 1996) ("Smith Declaration") (attached hereto as Exhibit 2). This 2.5 cents per minute charge stands in sharp contrast to the 0.3 cent per minute reciprocal charge recently found in Pennsylvania to be reasonable for interconnection between Bell Atlantic and a wireline new entrant in an arbitration under the provisions of Section 252. A copy of a presentation Comcast filed with the Commission which shows LEC interconnection rates, including rates of up to 8,000 percent over cost is attached hereto as Exhibit 3.

Vanguard's experience is similar. For example, Vanguard has approximately a dozen cellular systems in Bell Atlantic telephone service areas and pays similar non-cost based rates for interconnection. In other markets it pays up to 5 cents per minute for interconnection.

Since cellular service began in the mid-1980s, many cellular carriers have attempted to obtain cost-based, reciprocal compensation arrangements. These efforts have included negotiations and complaints to both state and federal authorities.[6/] As the FCC found in its Order, despite policies intended to mandate reciprocal, cost-based compensation for interconnection, incumbent LECs have exploited their monopolies to "impose[] arrangements that provide little or no compensation for calls terminated on wireless networks, and in some cases imposed charges for traffic originated on [wireless] networks." Local Competition Order at ¶ 1094 (emphasis supplied).

B. CMRS Providers Are Particularly Adversely Affected by the Stay.

CMRS providers, unlike many other new entrants, have a long history of unsatisfactory and unreasonable negotiated interconnection arrangements with incumbent LECs. Also unlike other new entrants that currently are negotiating their initial interconnection arrangements with the LECs, CMRS providers currently are paying substantial sums to the LECs and LECs are paying nothing to CMRS providers in return. Consequently, the stay has caused immediate and irreparable harm to CMRS providers in excess of one million dollars a day. While the FCC promised prompt resolution of its CMRS interconnection reform proceeding, reform was delayed by the implementation of the 1996 Act. The Stay Order has further delayed this process by staying several rules on reciprocal compensation that advance reform but do not implicate the FCC's authority to adopt pricing rules that contain defaults or specific pricing methodologies.

6/ One such complaint, which has been pending since 1988, is described in the comments of Radiofone, Inc. in the FCC's pending proceeding on safeguards for LEC provision of wireless services. See Comments of Radiofone, Inc., FCC WT Docket No. 96-162, filed Oct. 3, 1996.

The FCC's non-pricing rules were designed to end ten years of incumbent LEC evasion through several simple mechanisms. First, they permit CMRS providers operating under non-reciprocal interconnection arrangements to renegotiate those arrangements immediately. 47 C.F.R. § 51.717(a). This "fresh look" requirement is consistent with previous FCC actions in cases where one party had an unreasonable advantage in negotiations, resulting in the FCC having to create an opportunity for fair bargaining.[7] Equally important, the "fresh look" requirement was the only way to bring existing CMRS interconnection agreements into conformity with the specific requirement of new 47 U.S.C. § 251(b)(5) that LECs provide reciprocal compensation for transport and termination of traffic.[8] Similarly, the FCC adopted a requirement for interim reciprocal compensation during the pendency of negotiations between incumbent LECs and CMRS providers, recognizing that CMRS providers are disadvantaged to the extent they are required to continue paying non-reciprocal rates pending lengthy renegotiations with the LECs.

The FCC's actions in adopting a "fresh look" policy and interim reciprocal compensation for LEC-CMRS interconnection were necessary to put CMRS providers in the same position as other carriers under the 1996 Act. By staying the non-pricing related provisions, this Court has, among other things, stayed the rule requirement that LECs renegotiate

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7/ See Expanded Interconnection With Local Telephone Company Facilities, Second Memorandum Opinion and Order on Reconsideration, CC Docket No. 91-141, 8 F.C.C.R. 7341, 7346-47; see also Amendment of the Commission's Rules Relative to Allocation of the 849-851/894-896 MHz Bands, GEN Docket No. 88-96, 6 F.C.C.R. Rcd 4582, 4583 (1991).

8/ Indeed, in the FCC's CC Docket No. 95-185, several LECs vigorously argued that the requirements of Section 251 had to be applied to CMRS-LEC interconnection. See, e.g., Letter from Michael K. Kellogg, Attorney for Bell Atlantic and Pacific Telesis, to William F. Caton, Acting Secretary, FCC, March 13, 1996.

existing contracts with CMRS providers to bring those arrangements into compliance with the terms of the 1996 Act.

While the stay remains in place, CMRS providers will continue to be subject to the burdensome terms of their existing interconnection arrangements. CMRS providers also will suffer from additional handicaps that do not affect wireline new entrants. Unlike new entrants, CMRS providers typically are bound by their existing interconnection agreements for periods of up to several years. Thus, given the breadth of the Stay Order, the harms to CMRS providers are not mitigated by an opportunity to negotiate under the provisions of Section 252 because the stay of FCC rule Section 51.717 effectively eliminates the right to negotiate at all.[9/]

In addition, under Section 51.717 of the FCC's rules, LECs are required to pay CMRS providers for their termination of LEC traffic pending renegotiation of the present rates. This rule does not set a rate or even specify a methodology for determining rates. It requires that the existing rate be applied to calls traveling in each direction. This rule merely requires that LECs comply with the FCC's pre-existing reciprocal compensation rule (that the LECs have largely ignored), and the reciprocal compensation obligation already contained in the 1996 Act. This rule was necessary, however, because CMRS providers are <u>currently</u> paying substantial sums to the LECs while being denied reciprocal compensation already required under Section 20.11 of the FCC's existing rules and Section 251(b)(5) of the Communications Act. Without the requirement that reciprocal arrangements commence immediately, incumbent LECs will stall

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9/ It truly would be ironic if the LECs who previously argued to this Court that no harm would be visited on any party by grant of a stay now argued in response to the AirTouch Motion that as a result of the Stay Order it was their intent to cease negotiation with CMRS providers with existing, non-reciprocal interconnection contracts.

reciprocal payments until the end of existing contract terms. By staying FCC rule Section 51.717, therefore, the Court unwittingly provides the LECs the ability to perpetuate their enduring disregard for the requirements imposed on them by the FCC and Congress.

Similarly, continued stay of rule Section 51.701 effectively allows incumbent LECs to assess new or additional charges on calls that are interconnected anywhere within the CMRS provider's service territory. The FCC adopted Section 51.701 to make plain that incumbent LECs could not impose their more geographically limited local, non-toll calling areas on CMRS providers, whose local service territories, known as Major Trading Areas ("MTAs"), were determined by the FCC and are generally far larger than a landline local calling area. The rule, in essence, is a ratification of FCC policies on CMRS interconnection that predate the 1996 Act by more than ten years. The effect of the stay, consequently, was not to maintain the status quo prior to the adoption of the Local Competition Order, but to alter it significantly. Indeed, stay of the rule has prompted incumbent LECs to attempt to constrict CMRS providers — both existing cellular carriers and new PCS providers — from offering their customers wider local calling areas that reflect their FCC-licensed service territories.

This is not merely a theoretical concern. Comcast has been informed by Bell Atlantic that, as a result of the stay of 51.701, in renegotiation, Bell Atlantic will insist that Comcast conform its calling areas to Bell Atlantic's to receive cost-based interconnection rates. Bell Atlantic expects Comcast to pay higher, non-cost based rates for calls outside the landline local calling areas.[10/] Bell Atlantic's approach not only is at odds with the rules adopted by the FCC,

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10/ Western Wireless' experience is also similar. Prior to the Stay Order, GTE had agreed in interconnection discussions to use the MTA as the local calling area. Following the (continued...)

but also is contrary to the FCC's longstanding policies holding that wireless carriers are not subject to access charges because of significant differences between their networks and landline networks.

CMRS providers are substantially harmed by a stay of Section 51.701. Moreover, incumbent LECs did not object to the concept of a non-contiguous, larger CMRS local calling area either in the CMRS interconnection reform proceeding or the 1996 Act rulemaking and none of the moving states or incumbent LEC parties cited or raised any particular concern with the FCC's adoption of a rule specifying the range of a CMRS provider's local calling scope.[11/] Particularly because the FCC's rule confirms the federal licensing scheme for CMRS providers and does not dictate either an interconnection price or pricing methodology, the Court should remove its stay as applied to Section 51.701.

Finally, both Sections 51.703 and 51.711(a)(1) merely seek to make structural — not pricing changes — in the relationships between CMRS and incumbent LECs. The FCC's sole reason for adopting a duty on LECs to pay reciprocal compensation was the FCC's express finding of the incumbent LEC's widespread failure to comply with the pre-existing reciprocal compensation duty in Section 20.11.[12/] Because neither of these rules dictates a price or pricing

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10/ (...continued)
Stay Order, GTE indicated that they wished to rethink this prior agreement.

11/ In fact, Petitioner SBC Corporation is on record as supporting larger CMRS calling scopes. As part of its Comments filed with the Federal Communications Commission in the CMRS Interconnection Rulemaking, CC Docket No. 95-185, SBC submitted an attachment in which their expert, Dr. Jerry Hausman, advocated that cellular calling areas should, "at a minimum be as large as an MTA." See Exhibit 4 at ¶ 7.

12/ Order at ¶ 528.

methodology, a stay merely will be seized on by incumbent LECs as a reason to delay establishment of reciprocal, symmetrical rates to the detriment of CMRS carriers.

II. THE CRITERIA FOR A STAY HAVE NOT BEEN MET AS TO THE NON-PRICING ELEMENTS OF THE COMMISSION's RULES.

The Stay Order correctly notes that the parties requesting a stay primarily sought to stay only the FCC's pricing rules. The Court did not find, however, that the requisite showing for a stay was made as to the non-pricing elements of the FCC's rules.[13/] Moreover, the LECs did not specifically argue that the non-pricing elements of the reciprocal compensation rules should be stayed.[14/] Indeed, the movants did not and could not meet the standards for a stay of the non-pricing rules. The non-pricing rules are fully consistent with the FCC's statutory powers and obligations, including longstanding policies that are not challenged here. Moreover, while the current stay creates significant harms to CMRS providers, permitting the non-pricing provisions that affect CMRS providers to go into effect will not irreparably injure incumbent LECs. Rather, modifying the stay to permit the non-

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13/ "[T]he parties seeking a stay pending appeal[] must show that (1) they are likely to succeed on the merits, (2) they will suffer irreparable injury unless the stay is granted, (3) no substantial harm will come to other interested parties, and (4) the stay will do no harm to the public interest." Arkansas Peace Ctr. v. Arkansas Dep't of Pollution Control & Ecology, 992 F.2d 145, 147 (8th Cir. 1993).

14/ GTE sought a stay of the "pricing rules" but, without any discussion or explanation, included non-pricing rules within the sweep of its list of rules to be stayed. Careful review of GTE's Motion, Reply Memorandum and oral argument demonstrate that GTE was interested in staying the mandatory application of the FCC's default pricing rules and the rule methodology and nothing else. Other LECs took a more targeted approach. U S West, for example, only sought stay of the "FCC's prescription of default prices and its establishment of the right ... to 'pick and choose' among provisions of any other interconnection contract." U S West, Inc. Reply in Support of Motion for Stay Pending Judicial Review, September 24, 1996.

pricing provisions of the rules that affect CMRS providers to go into effect is necessary to prevent continuing unjust enrichment of the incumbent LECs.

As shown above, incumbent LECs have evaded the Commission's CMRS interconnection policies for more than ten years, and the evidence shows they will continue to evade their obligations to enter into reciprocal compensation arrangements absent specific rules forcing them to comply. Moreover, incumbent LECs had no reasonable expectation of continuing to enjoy the benefits of their non-reciprocal CMRS interconnection arrangements because non-reciprocal arrangements have been prohibited since the 1996 Act was enacted on February 8. The FCC also has independent authority, previously exercised when it adopted Section 20.11 of the FCC's rules, to require reciprocal compensation. Both the "fresh look" opportunity and the interim reciprocal compensation provision in Section 51.717 are, properly viewed, implementations of that pre-existing policy. Thus, incumbent LECs cannot be irreparably injured by application of these non-pricing rules.

Incumbent LECs similarly cannot complain about the other non-pricing rules affecting CMRS providers. For instance, Section 51.701, which describes the appropriate calling scope for reciprocal transport and termination arrangements, adopts the same calling scope typically used in existing LEC-CMRS agreements. Similarly, Section 51.703, which precludes charges to CMRS providers for traffic received from a LEC, embodies the same principles as the requirement for reciprocity in Section 251(b)(5) of the Communications Act.

Maintaining the stay as to the non-pricing rules will result in continued unjust enrichment of incumbent LECs. The record in the proceeding before the agency, years of FCC policies and the express requirements adopted in the 1996 Act all require reciprocal charges between LECs and CMRS providers, at rates that are just and reasonable. Maintaining the current regime, as was noted in oral argument and in the AirTouch Motion, costs the CMRS industry approximately one million dollars a day. This windfall to the LECs has increased by $25 million since this Court heard oral argument on the stay motion. By the time of oral argument on the merits, it will reach $100 million, money that may never be recovered unless the stay is modified.

While the best course is for the Court to modify the stay, it also could consider alternative mechanisms to redress the injuries incurred by CMRS providers. Failing modification, the Court should adopt a mechanism for the recapture of charges paid during the period the stay is in effect to minimize the potentially significant financial impact of the stay on CMRS providers.[15] For instance, the Court could require carriers to maintain an accounting of charges paid for interconnection and require that rates for LEC-CMRS interconnection, once lawfully set in arbitrations or negotiation, relate back to the initial effective date of the FCC's rules. Such a mechanism would somewhat mitigate the burden of the stay on CMRS providers. Alternatively, pursuant to Rule 18 of the Federal Rules of Appellate Procedure, the Joint Parties respectfully request the Court to order incumbent LECs to post a bond covering the $1 million per day lost to the CMRS providers during the pendency of the stay.

15/ This Court previously has imposed conditions to a stay pending review to protect the financial integrity of the parties directly affected by the injunction. See Panhandle Eastern Pipe Line Co. v. Federal Power Comm'n, 179 F.2d 896, 898 (8th Cir. 1949).

III. THE STAY ORDER IMPROPERLY FAILED TO RECOGNIZE THE FULL EXTENT OF THE FCC'S JURISDICTION.

The Stay Order addresses the question of the FCC's jurisdiction to adopt rules implementing Sections 251 and 252 of the Communications Act. It does not, however, recognize the full extent of the FCC's jurisdiction. The stay fails to recognize that, even assuming the analysis of Section 2(b) in the Stay Order is correct, the FCC retains jurisdiction over all interstate matters and over CMRS-LEC interconnection. Thus, the stay should be modified to the extent that it now prevents application of the rules contained in the FCC's Local Competition Order either to interstate matters or to CMRS-LEC interconnection.

The FCC's jurisdiction over interstate matters is plenary. Section 2(a) of the Communications Act states that "[t]he provisions of this act shall apply to all interstate . . . communications by wire or radio[.]"[16] The FCC's powers over interstate services include, among other things, the power to determine just and reasonable rates.[17] The FCC's authority over the terms and conditions for interstate services specifically was preserved by Congress when it adopted the 1996 Act.[18] Section 2(b), on which the Court relied in granting the stay, has no impact on this broad grant of authority because Section 2(b) is limited to intrastate matters.

16/ 47 U.S.C. § 152(c). As the Supreme Court has held, the FCC's authority over interstate matters is extremely broad. See Louisiana PSC v. FCC, 476 U.S. 355 (1986); see also Houston E & W.T.R. Co. v. United States, 234 U.S. 342 (1914) ("Shreveport Rate Case") (holding that language in predecessor statute to Communications Act granted plenary authority over communications services).

17/ See 47 U.S.C. § 201(b) ("All charges . . . for and in connection with such [interstate] communications services, shall be just and reasonable . . .").

18/ 47 U.S.C. § 251(i) ("Nothing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201.")

47 U.S.C. § 152(b). The jurisdictional theory upon which the stay is premised simply does not apply to any interstate service covered by the FCC's local competition rules. Consequently, the stay's application is overbroad and should be lifted to the extent that it affects interstate services and rates.

In addition, the FCC has been granted explicit authority over interconnection between CMRS providers and LECs. As the AirTouch Motion describes, in the 1993 Budget Act, Congress amended the Communications Act to alter radically the regulatory structure that applied to wireless telecommunications services. The 1993 Budget Act amendments gave the Commission the power to specify interconnection arrangements between CMRS providers and LECs.[19/] At the same time, the 1993 Budget Act greatly reduced State authority to regulate CMRS. 47 U.S.C. § 332(c)(1)(3). Like the FCC's general authority over interstate services, the FCC's power to address CMRS interconnection issues under Section 332 is not affected by Section 2(b).[20/] Thus, given the grant to the FCC of jurisdiction over CMRS interconnection, the rationale for the Stay Order does not apply to CMRS and the stay should be lifted as to CMRS providers. The Court, however, need not reach the Section 332 jurisdictional issue to conclude that the Stay Order is overbroad as to its impact on non-pricing provisions of the FCC's rules. However, to the extent that the Court seeks to determine the application of Section 332 to the

19/ 47 U.S.C. § 332(c)(1)(A) (granting FCC regulatory power over CMRS providers); (c)(1)(C) (granting FCC regulatory power over common carrier interconnection with CMRS providers).

20/ 47 U.S.C. § 152(b) (excluding Section 332 from limitation on FCC regulation of intrastate matters).

Commission's authority to promulgate rules, the Joint Parties ask that such a determination follow full briefing on the merits on this issue.

IV. CONCLUSION.

The Joint Parties support the AirTouch Motion's call for the partial lifting of the Stay Order. Failure to narrow the stay has a substantial, adverse impact on CMRS providers. The non-pricing aspects of the FCC's reciprocal compensation rules simply were not addressed by the LEC movants or by this Court in the Stay Order. For all of these reasons, the Court should modify its Stay Order and lift the stay as to all non-pricing rules, including Sections 51.701, 51.703, 51.711(a)(1) and 51.717 of the FCC's Rules.

Respectfully submitted,

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THE JOINT PARTIES

October 25, 1996

EXHIBIT 1

SELECTED FCC RULES - PART 51 SUBPART H

Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic

§51.701 Scope of transport and termination pricing rules.

(a) The provisions of this subpart apply to reciprocal compensation for transport and termination of local telecommunications traffic between LEC's and other telecommunications carriers.

(b) *Local telecommunications traffic.* For purposes of this subpart, local telecommunications traffic means:

(1) Telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission; or

(2) Telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in Section 24.202(a) of this chapter.

(c) *Transport.* For purposes of this subpart, transport is the transmission and any necessary tandem switching of local telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.

(d) *Termination.* For purposes of this subpart, termination is the switching of local telecommunications traffic at the terminating carrier's and office switch, or equivalent facility, and delivery of such traffic to the called party's premises.

(e) *Reciprocal compensation.* For purposes of this subpart, a reciprocal compensation arrangement between two carriers is one in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of local telecommunications traffic that originates on the network facilities of the other carrier.

§51.703 Reciprocal compensation obligation of LECs.

(a) Each LEC shall establish reciprocal compensation arrangements for transport and termination of local telecommunications traffic with any requesting telecommunications carrier.

(b) A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network.

§51.711 Symmetrical reciprocal compensation

(a) Rates for transport and termination of local telecommunications traffic shall be symmetrical, except as provided in paragraphs (b) and (c).

(1) for purposes of this subpart, symmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of local telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services.

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(2) In cases where both parties are incumbent LECs, or neither party is an incumbent LEC, a state commission shall establish the symmetrical rates for transport and termination based on the larger carrier's forward-looking costs.

(3) Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.

(b) A state commission may establish asymmetrical rates for transport and termination of local telecommunications traffic only if the carrier other than the incumbent LEC (or the smaller of two incumbent LECs) proves to the state commission on the basis of a cost study using the forward-looking economic cost based pricing methodology described in §§51.505 and 51.511 of this part, that the forward-looking costs for a network efficient configured and operated by the carrier other than the incumbent LEC (or the smaller of two incumbent LECs), exceed the costs incurred by the incumbent LEC (or the larger incumbent LEC), and, consequently, that such that a higher rate is justified.

(c) Pending further proceedings before the Commission, a state commission shall establish the rates that licenses in the Paging and Radiotelephone Service (defined in part 22, subpart E of this chapter), Narrowband Personal Communications Services (defined in part 24, subpart D of this chapter), and Paging Operations in the Private Land Mobile Radio Services (defined in part 90, subpart P of this chapter) may assess upon other carriers for the transport and termination of local telecommunications traffic based on the forward-lookng costs that such licenses incur in providing such services, pursuant to §§ 51.505 and 5.511 of this part. Such licensees' rates shall not be set based on the default proxies described in § 51.707 of this part.